Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

DAVID DOUGLAS O'CONNELL,

Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TENNESSEE COURT OF APPEALS NASHVILLE

PETITION FOR A WRIT OF CERTIORARI

DAVID DOUGLAS O'CONNELL, PRO SE

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61 pp

QUESTION PRESENTED

Can a United States citizen be denied of the rights afforded by the Fifth and the Fourteenth Amendment of the United States Constitution, and be stripped of their real property by the unsubstantiated opinion of a Court appointed Special Master?

PARTIES AND 29.6 STATEMENT

1. All Parties names appear on the Cover

2. There is no corporate party

3. This case has not been published.

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STATEMENT OF JURISDICTION

Petitioner, David Douglas O'Connell respectfully requests that a writ of certiorari issue to review the judgement and opinion of the Tennessee State Court of Appeals, at Nashville, entered April 15, 2002. (A rule 11 was filed but denied).

A petition to rehear was filed, May 6, 2002, and an order denying said petition was filed, August 8, 2002. The jurisdiction of this court to review the judgement of the Tennessee Court of Appeals is invoked under 28 U.S.C. 1257(a)

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the Constitution in pertinent part, states, "No person shall be deprived of life, liberty, or property, without due process of law, not shall private property be taken for public use without just compensation." The Fourteenth Amendment to the Constitution, in pertinent part states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor any state deprive any person of life, liberty or property without due process of law, not deny to any person within its jurisdiction, the equal protection of the laws." Title 1, Section 21 of the Tennessee State Constitution also applies to the case at bar.

STATEMENT OF THE CASE

This is an inverse condemnation action brought by

Petitioner, David Douglas O'Connell, against, Metropolitan Nashville, Davdison County and the State of Tennessee, for the taking of property, owned by O'Connell, by the Tennessee Department of Transportation (TDOT) without just compensation. In fact, although TDOT had been notified by O'Connell of his ownership of the subject property, TDOT paid other people for said subject property.

O'Connell filed his case pursuant to T.C.A. 29-16-123 et. Seq., and 12-1-201 et. Seq., RV1-P1 which defines unconstitutional taking and invokes the Fifth and Fourteenth Amendment of the U.S. Constitution and Article 1, Section 21 of the Tennessee Constitution.

T.C.A. 12-1-203 heading is, "Guidelines for avoiding unconstitutional takings". Both parties filed Motions for Summary Judgment, but as the Court could not make a determination, a Special Master was appointed. The Special Master, in his report, found O'Connell to be owner of record of the two parcels of the subject property (R.V. P 112), but that he had lost one parcel by adverse possession (R.V.2 P. 113)

O'Connell objected, but the trial judge denied the objection and accepted the Masters report (without the lawfully required transcript - verbatim and in to-to. The Master had ruled, Pegasus Properties had color of Title and seven years possession of subject property, RV2 - P113-10a (Appendix E)

O'Connell moved to alter or amend, pointing out that the Master did not address the exception of the subject property shown in the Pegasus Properties deed, which, under Tennessee law removed it from the grant, and

thus, there was no color of title. And there was no proof that possession of the driveway had been seven years. The trial judge denied the Motion. O'Connell then appealed to the Tennessee Court of Appeals, and again brought up the issue of the exception as well as the fact the Master had not filed a transcript as is required by law. Tennessee Rules of Civ. Pro. 53.04 and U.S. Rules of Civ. Pro. 53.

The Court also accepted the masters ruling and denied the appeal (Appendix A). O'Connell then filed a petition to rehear, pointing out error (Appendix E). The Court of Appeals denied the petition.

O'Connell then filed an application to appeal to the State Supreme Court (Appendix F) The State Supreme Court filed an order denying application on December 16, 2002 (Appendix G).

REASONS FOR GRANTING THE WRIT

Article Six of the U.S. Constitution declares the Constitution to be the supreme law of the land. This Constitution has been violated, its law broken, by the Tennessee Department of Transportation (TDOT) in its taking petitioner (O'Connell's) property without just compensation. Many Tennessee citizens view TDOT, as a rogue elephant that can run, with impunity, rough shod over the people. Even the new Governor of the state has taken a stand in regard to the action of TDOT.

The need is great for this Court to exercise its supervisory authority and rectify the errors made by the inferior Courts. This would show TDOT, and the

inferior courts, that this Court, being the ultimate protector of the Constitution, and the peoples rights, will not stand idly by and allow such infractions to occur.

In the case at bar, the Court appointed master ruled, Pegasus Properties deed gave color of title and possession for seven years, gave title, by adverse possession to the subject property. RV2-P113.10. The above mentioned deed also contained an exception to the subject property RV2-P125. Here the law is very clear, "an exception may be out of the granting part of the deed, or out of the thing already granted. If the former, the effect, in respect to the thing excepted is as if it had never been included in the deed. The grantor remains signed as before to the part excepted." Tennessee Jurisprudence, Deeds, E Reservations and Exceptions, Section 28.

As the subject property was excepted in the deed, it did not purport to convey and therefore there was no color of title. There being no color of title, there could be no title by adverse possession under the seven year rule, and title remains with the true owner, O'Connell.

The master ruled Pegasus possession lasted seven or more years, RV2 P113.100 (Appendix C). This is pure conjecture, as no time of entry was determined, the master ruled the driveway <u>had</u> to have been started at a certain time because of a building inspection. No new driveway <u>had</u> to be built at any time, as a gravel driveway to the site had been in place for over one hundred years, and was used to haul building materials by the construction workers and delivery trucks to the building site. An aerial photograph of the site showing

the above mentioned gravel driveway was presented to the master at his meeting. This photo was purchased from Metropolitan Nashville's planning division. Petitioner also apprised the master orally of the old driveway when he held his meeting with the parties, yet in his report, he states the new driveway is the only means of ingress and egress. RV2, P113.8 (Appendix C).

The length of time in possession is irrelevant, however, as with no color of title, the seven year rule does not apply. The master erred in not addressing the exception in the deed and in his determination of time of possession. The trial Court erred in endorsing the master's report without transcript, and without question.

The Court of Appeals erred in its acceptance of the Master's ruling. In its opinion, Appendix A. P4, par. 4, is stated, "We need not examine the deed because, appellant (O'Connell) did not challenge Pegasus color of title before filing his Motion to Alter or Amend. Then in its Order on Petition to Rehear (Appendix D), on page one, Par. 2, 3 it states, "the aforementioned argument could have been (and no doubt was) presented to the Master," but still denied Petition to Rehear (*please see* Petitioner Petition to Rehear (Appendix E) and Application to Appeal to State Supreme Court (Appendix F).

When the State (TDOT) paid Crawford, erroneously, for O'Connell's property, the payment was for property value plus incidental damages. When O'Connell's case was heard, the jury was instructed to consider property value only - no incidental damage was allowed on the Crawford case. This action alone causes concern as to

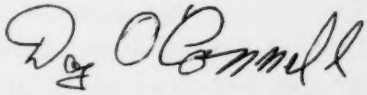
the position of the Court in regard to his case.

Granting this requested writ will permit the Court to deal with the errors of the lower courts, and such Courts application of the law, especially in such cases as TDOT's arrogance in their taking of private property, which is best exemplified by its, "title searched," in which the search is limited to the present owner. (*See* Appendix H).

CONCLUSION

For all the foregoing reasons, Petitioner respectfully prays the Court to grant this petition and issue a writ of certiorari to the Tennessee Court of Appeals at Nashville, Tennessee.

Respectfully submitted,



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APPENDIX A - IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE JANUARY 9, 2002 SESSION

DAVID DOUGLAS O'CONNELL,

Plaintiff/Appellee,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.,

Defendant/Appellant.

Appeal from the Circuit Court for Davidson County

No. 98C-974

Filed April 15, 2002

Walter C. KURTZ, Judge

No. M2001-00491-COA-R3-CV

The plaintiff in this inverse condemnation action alleged that the State took two parcels of land that belonged to him for a road-widening project, paying compensation to the wrong parties. The trial court referred the question of ownership of the disputed parcels to a special master, who determined that the plaintiff was not entitled to compensation for one of the

adverse possession. The trial court affirmed the findings of the special master. We affirm the trial court.

Tenn R. App. P.3 Appeal as of Right;
Judgment of the Circuit Court
Affirmed and Remanded

H. Cantrell, P.J., M.S., delivered the opinion of the court, in which Patricia J. Cottrell, J. and Don R. Ash, Sp. J., joined.

Clark H. Tidwell, Nashville, Tennessee, for the appellant, David Douglas O'Connell.

Paul G. Summers, Attorney General and Reporter; Wendell C. Dawson, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. LAND IN DISPUTE

In 1859, John H. Taylor purchased a thirty-acre tract in Davidson County along both the eastern and western sides of the Old Louisville Branch Turnpike. Mr. Taylor later conveyed the western portion of his tract to W. R. Sanders, and it was subsequently divided further. Alice Frances Cranford and Carolene Marie Bandy (Cranford) eventually purchased one of the tracts at issue in this case, while a group of investors (Pegasus Properties) purchased the other. The plaintiff in this case is David Douglas O'Connell, the great-grandson of John H.

Taylor. He acquired the remainder of the Taylor property by warranty deed from Mr. Taylor's other heirs.

The Old Louisville Branch Turnpike later became Dickerson Road. Over the course of time, the road was widened and straightened, and the right of way shifted eastward. Mr. O'Connell claimed that as a result he held title to land on both sides of Dickerson Road. However, he did not occupy or make use of the bordering Dickerson Road on the west.

In 1995, the Tennessee Department of Transportation prepared to improve and widen Dickerson Road again, and it needed narrow strips of land on both sides of the road to do so. Rather than condemn the property it needed for the project, TDOT chose to acquire it administratively. The Department purchased a strip of land on the east side of Dickerson Road from Mr. O'Connell for $13,000. Mr. O'Connell claimed that he had put the State on notice that the land it wanted on the west side of the Pike was also part of the O'Connell property, and did not belong to either Cranford or Pegasus. Nonetheless, the State purchased those strips of land from Cranford and Pegasus for $8,000 and $32,775 respectively.

II. COURT PROCEEDINGS

On April 8, 1998, Mr. O'Connell brought an inverse condemnation action against both the State of Tennessee and the Metropolitan Government of Nashville and Davidson County. He claimed that the land acquired from Cranford and Pegasus belonged to him, and thus, that the property had been taken without payment of

just compensation to its true owner.

The State filed a motion to be dismissed as a defendant under Tenn. R. Civ. P. Rule 12.02(1) for lack of subject matter jurisdiction, citing the doctrine of sovereign immunity. Mr. O'Connell and the Metro Government filed cross-motions for summary judgment. Among other defenses, Metro contended that Mr. O'Connell's claim was barred by adverse possession, and thus that even if he could prove record title to the Cranford and Pegasus properties, he had lost his property rights to the other landowners.

On January 5, 1999, the trial court filed a Memorandum and Order in this case. The judge stated that while the parties had submitted deeds to the disputed property, and Mr. O'Connell had submitted an affidavit from a surveyor that he retained, these documents were not very helpful. He observed that to a layperson, the metes and bounds description in the deeds were incomprehensible, and that the surveyor did not offer any opinion as to whether the conveyances to Cranford and Pegasus included the disputed property. The court denied both motions for summary judgment, and scheduled a meeting in chambers to discuss the possibility of appointing a special master to hear evidence and report findings to the court, in accordance with Rule 53, Tenn. R. Civ. P.

On January 14, 1999, the trial court issued an Order of Reference. The court stated that during the meeting with counsel in chambers, "[b]oth parties agreed to the appointment of a Master and both parties recommended Mr. C. Dewees Berry IV of the Nashville Bar as the

Master." The court accordingly appointed Mr. Berry as Master to determine the questions at issue, specifically including the question of adverse possession, and to file a report, including findings of fact and conclusions of law, within 90 days.

The Special Master conducted a hearing in his office on April 8, 1999 before the plaintiff, his attorney, the attorney for the defendants, and Mr. Robert D. Warren, a professional engineer. There was no court reporter present. Both Mr. O'Connell and Mr. Warren gave sworn testimony and submitted exhibits to the Master including surveys, drawings and deeds. Relying upon these, and upon the court file and pertinent portions of the Davidson County tax map, the Master concluded that Mr. O'Connell's claim should be upheld in regard to the property acquired by the State from Cranford, and dismissed in regard to the property acquired by the State from Pegasus Properties.

In his report, the Master referred to the property conveyed to the State by Cranford as Parcel 1, and the property conveyed to the State by Pegasus as Parcel 2. He stated that the description in the deed to the Cranford property did not include any portion of Parcel 1, and that the owners did not keep up, use, or otherwise take possession of any portion of Parcel 1.

He found, however that the property description in Pegasus Properties' recorded deed included Parcel 2, and therefore gave it color of title to that parcel. He also found that the Pegasus partners had filled a portion of that parcel, and constructed a driveway over part of Parcel 2, which was the only means of ingress or

regress to its entire tract. He further noted that the plaintiff admitted that the driveway was installed "sometime in 1988." Relying upon a building permit (dated April 12, 1988) and a final inspection report (dated August 26, 1988) both issued by the Metro government, he found that Pegasus Properties had to have begun construction well before August 17, 1995, the Master concluded that Pegasus had held the disputed property adversely to Mr. O'Connell for more than seven years.

Mr. O'Connell filed an objection to the report of the Special Master, which challenged the finding of adverse possession by Pegasus. Interestingly, the plaintiff did not dispute the factual predicate of the Master's report, but only the inferences to be drawn from the facts. He did not deny that Pegasus had built a driveway over Parcel 2, but asserted that it had been done with his permission, without explaining in what way that permission was expressed. He also argued that Pegasus could not be deemed to have occupied the disputed property until the Certificate of Occupancy was issued on August 26, 1988. The trial court considered the plaintiff's arguments, but overruled the objection and affirmed the Master's Report in its entirety.

The court entered a partial summary judgment on the report, and ordered that the case be set for jury trial on the issue of the valuation of the Cranford property.[1]

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1. The record reveals that this portion of the case eventually went to trial, and that after a brief jury trial, the court entered a $7,904 judgment for Mr. O'Connell against Metro Government on the Cranford property, and dismissed the State of Tennessee as a party.

The plaintiff then filed a Motion to Alter or Amend the Judgment, which included an additional argument: that the Master misinterpreted the deeds he examined, and that the correct interpretation would have revealed that Pegasus did not have color of title to Parcel 2. The trial court denied the motion. This appeal followed.

III. ISSUES ON APPEAL

On appeal, Mr. O'Connell renewed the arguments he asserted in his Objection to the Report of the Special Master and in his Motion to Alter or Amend the Judgment. He also argued for the first time that the trial court was not entitled to render a summary judgment in this case because of the absence of a transcript of the hearing before the Special Master.

Rule 36 of the Rules of Appellate Procedure describes the nature of the relief appeals courts are authorized to grant as follows: "[n]othing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent to nullify the harmful effect of an error." Rule 36(1). Since Mr. O'Connell participated in the hearing before the Master without a reporter present and failed to object to the lack of a transcript until his motion to alter or amend, we are not required to grant him any relief

based upon the theory that the lack of a transcript rendered the trial court's reliance upon the Special Master's report invalid.[2]

We note, however, that even if the appellant had brought the absence of a transcript to the attention of the trial court in a timely manner, he still would not necessarily be entitled to the relief he seeks. Our Supreme Court has ruled, in the case of *In re Estate of Tipps*, 907 S.W.2d 400 (Tenn. 1995), that while it would indeed be error for the master not to file a transcript "unless otherwise directed by the order of reference," *see* Rule 53.04 Tenn. R. Civ. P., such an error does not necessarily require the reversal of a judgment based upon a master's report. Such a report may be affirmed so long as there is material evidence in the record to support it, and "findings of fact by the master concurred in by the trial court are conclusive on appeal if supported by any material evidence." 907 S.W.2d at 403. In the present case, there is no dispute as to the material facts that are relevant to the arguments that we are

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2. Rule 21.03 of Davidson County's Local Rules for Courts of Record states that "the parties are responsible for providing a court reporter in order to preserve rights to object before the trial judge. The master is not required to file a transcript of the proof with the master's report." While this rule may explain the absence of a transcript in this case, it does not excuse it. The local rule is in conflict with the Rule 53 of the Rules of Civil Procedure, which requires the preparation of a transcript unless the master is "otherwise directed by the order of reference." It also conflicts with the Supreme Court's opinion in *In re Estate of Tipps*, 907 S.W.2d 400 (Tenn. 1995), which explicitly rejects the proposition that the responsibility for filing the transcript rests on the party seeking to appeal.

obligated to review.[3]

It appears to us that we need only address the question of whether Pegasus proved its adverse use of the land for the seven-year period required to establish adverse possession. We need not examine the deed by which Pegasus acquired the property, for the appellant did not challenge Pegasus' color of title prior to filing his Motion to Alter or Amend. A Rule 59.04 Motion "should not be used to alter or amend a summary judgment if it seeks to raise new, previously untried legal theories, to present now, previously unasserted legal arguments, or to introduce new evidence that could have been adduced and presented while the summary judgment motion was pending." *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998). *See also Harris v. Chern*, 33 S.W.3d 741 (Tenn. 2000). A stronger reason exists for applying this rule to a case where the issues have been tried on the merits.

The appellant admits that Pegasus built a driveway over Parcel 2, shortly after acquiring the property, but argues that the appellee should not be deemed to have occupied the parcel until August 26, 1988, when Metro issued a Certificate of Occupancy. It does not appear to us, however, that possession of property adverse to the interests of its owner depends for its validity upon the assent of local government.

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3. We should not be confused by the trial court's label of partial summary judgment put on the question of the adverse possession of the two tracts. The court's decision was in actuality an affirmance of the Master's findings on a resolution of the disrupted facts. Calling the order a summary judgment was merely a misnomer.

Possession begins, rather, with an entry onto land which amounts to an ouster of the true owner. *Moffitt v. Meeks*, 199 S. W.2d 464 (1946). Another formulation of the same principle states that the existence of a right of action against the party in possession is always sufficient to start the statute and perfect the right in the possessor. 1 Tennessee Jurisprudence, *Adverse Possession §15* (2001). The staking of the land and the beginning of the construction of the driveway on Parcel 2 gave Mr. O'Connell a possible right of action for trespass, and thus was sufficient to start the seven-year period required to establish adverse possession of the parcel.

While the exact date that Pegasus entered the land is not in the record, Pegasus would have had to stake the land, begin the driveway, complete it, have its property inspected by Metro Codes, and receive a certificate of occupancy, all within a period of nine days, for Mr. O'Connell's theory to prevail. Without further proof, the Special Master and the trial court were not convinced that Pegasus could have operated on such a timetable. Neither are we.

IV.

The judgment of the trial court is affirmed. Remand this cause to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant, David Douglas O'Connell.

"s/Ben H. Cantrell, Presiding Judge, M.S."

Appendix B

APPENDIX B - IN THE FIFTH COURT OF DAVIDSON COUNTY, TENNESSEE

DAVID DOUGLAS O'CONNELL,

Plaintiff,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE/DAVIDSON COUNTY, TENNESSEE, AND STATE OF TENNESSEE,

Defendants.

No. 98C-974

Filed June 9, 1999

Walter C. KURTZ, Judge

MEMORANDUM AND ORDER

This case is now before the Court on objections to the Report of the Special Master. *See* T.R.C.P. 53.04. The scope of the reference to the Master, as well as his powers, are set forth in the Order of Reference (January 14, 1999).

The issue referred to the Master relates to the ownership of property and is obviously central to the ultimate resolution of this inverse condemnation case.

Appendix B

The parties have agreed that the ownership issue will be resolved by the Court without a jury, while the valuation issue will be submitted to a jury.

This is an inverse condemnation action arising out of a dispute as to the true owners of a piece of property lying on the western edge of Dickerson Road in Nashville, Davidson County. As part of a road widening project, land on the eastern and western edges of Dickerson Road was transferred to the State of Tennessee by Warranty Deed. Mr. O'Connell negotiated the purchase of property lying on the eastern edge of Dickerson Road (Tract 10). The land on the western edges of Dickerson Road was acquired for the project by Warranty Deed form Alice Francis Cranford and Carolene Marie Bandy (Tract 9) and the Pegasus Properties (hereinafter "Pegasus") (Tract 8). Mr. O'Connell asserts that he owns a strip of land which is part of both Tract 8 and 9 on the west side of Dickerson Road.

This case has previously been before the Court on cross motions for summary judgment. These cross motions were denied by Memorandum and Order entered by this Court January 4, 1999. The Order of Reference then followed on January 14, 1999. The Report of the Special Master was received by this Court April 30, 1999 and objections were filed by the plaintiff May 13, 1999. The Metropolitan Government and the State have filed no objections to the Report of the Special Master.

Neither party has any objection to the finding by the Master that plaintiff is the owner of part of the

Cranford and Bandy tract (Tract 9). The finding of the Special Master is affirmed as to this finding.

The plaintiff disputes the Special Master's finding that Mr. O'Connell has no interest in the Pegasus property (Tract 9). As to that tract, the Master found as follows:

> 10. Pegasus Properties established title to Parcel 2 by adverse possession under T.C.A. §28-2-101 and T.C.A. §28-2-102 before conveying Parcel 2 to the State. T.C.A. §28-2-101 and §28-2-102 allow one who adversely possesses property for seven (7) years under color of title to acquire ownership.
>
> > a. Pegasus Properties' recorded deed gave it color of title. Generally, absent evidence of bad faith, any instrument purporting to convey land may constitute color of title, even though otherwise defective or even void. The question is not whether the instrument relied on conveys, but whether it purports to convey. *See* 3 Am.Jur.2d Adverse Possesion § 150 et seq. (1988). There is nothing to indicate that Pegasus did not in good faith believe it was acquiring title to Parcel 2. In fact, the description in the deed of Pegasus's predecessor in title ran to the centerline of Dickerson Road, and the Davidson County tax maps had included for many years Parcel 2 within the bounds of the tract

that Pegasus purchased.

b. There is no fixed rule for determining what constitutes possession. The determination depends on the facts of each case and the nature of the premises. I believe that by filling and building and using a driveway, Pegasus performed the requisite acts of possession.

c. Pegasus did not possess all of Parcel 2, but it possessed a sufficient portion to put the Plaintiff on notice of its claim. Actual possession of a portion of a unitary tract can be sufficient adverse possession of the whole under such circumstances when the claimant has color of title. *See* 2 Tenn.Jur., Adverse Possession § 43 (1982) and the cases cited therein.

d. Pegasus Properties' possession lasted for more than seven (7) years. Pegasus deeded Parcel 2 to the State on August 17, 1995. The Plaintiff concedes that the driveway was installed sometime in 1988," and the building permit issued to Pegasus by the Metropolitan Government of Nashville and Davidson County, Tennessee, and the Metropolitan Government's inspection report summary compel the conclusion that construction began well before August 17 of that year. The building permit is dated April 12, 1988, and the final inspection of the

building occurred on August 26, 1988.

The objections of the plaintiff are as follows:

1. The Special Master erred in determining that Pegasus Properties established title to Parcel 2 by adverse possession.

2. The Special Master erred in determining that Pegasus Properties possessed Parcel 2 in its entirety by building and using a driveway across Parcel 2. Otherwise Pegasus Properties respected the Plaintiff's property line. A driveway over the land of another does not create an interest in the land itself. *Clack v. White,* 32 Tenn. (2 Swan) 540 (1852). In this case the Plaintiff permitted the driveway to be built and used. Where the owner of land permits such a use, no easement is created. *Lewisburg v. Emerson,* 5 Tenn. App. 127 (1927). There is no evidence that Pegasus Properties did anything else to manifest an intention to possess Parcel 2.

3. The Special Master erred in determining that Pegasus Properties occupied any part of Parcel 2 prior to August 17, 1988 which is the beginning date for the seven (7) year period to run whereby ownership is acquired under color title. The final inspection and certificate of occupancy was not issued until August 26, 1988. The Metropolitan Code provides that "[n]o building shall be occupied .... until after the department of codes administration shall have issued a

certificate of occupancy therefor" § 16.36.010.

The Court rejects the objections of the plaintiff. The cases cited do not support his assertions. *Lewisburg v. Emerson,* supra, was a case that involved an easement by necessity. It does not address the factual scenario in the instant case. The case of *Clack v. White,* supra, also involves an easement, although the easement had been granted by the county court. Again, that case involved the matters of ingress and egress by necessity, and not an issue of adverse possession. The plaintiff argues that there can be no taking by adverse possession within the time period because a certificate of occupancy was not issued as required by the Metropolitan Code § 16.36.010. The Court rejects this contention The Master found that the acts of possession were "filling and building and using a driveway." That a certificate of occupancy was not acquired would not alter the efficacy of those acts.

The Court overrules the objections of the plaintiff and affirms the report of the Special Master, The Court, therefore, finds that the plaintiff's claim is upheld as to portion of the property acquired by the State from Cranford and Bandy and dismissed as to the portion of the property acquired by the State from Pegasus Properties. Partial summary judgment is therefore granted consistent with this finding.

Within forty-five (45) days the parties will please obtain an order setting this case for jury trial on the valuation issue.

Appendix B

This the 9th day of June, 1999.

"s/Walter C. KURTZ, Judge"

xc: Clark H. Tidwell
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Appendix C

APPENDIX C - IN THE CIRCUIT COURT FOR DAVIDSON COUNTY

DAVID DOUGLAS O'CONNELL,

Plaintiff,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE/DAVIDSON COUNTY, TENNESSEE AND STATE OF TENNESSEE,

Defendants.

Civil Action No. 98C-974

Filed April 20, 1999

C. Dewees BERRY, Special Master

REPORT OF SPECIAL MASTER

This is an inverse condemnation suit where the Plaintiff claims that he is the true owner of certain property on the western side of Dickerson Pike in Nashville deeded to the State of Tennessee (the "State") for road widening by Alice F. Cranford and Carolene M. Bandy and Pegasus Properties. By Order of Reference dated January 14, 1999, I was appointed Special Master to determine the ownership of the

property in question (the "Subject Property") and whether the Plaintiff's claim is barred by the statutes relating to adverse possession, TCA §§ 28-2-101 to -111.

On April 8, 1999, I held a hearing at my office at 2700 First American Center, Nashville, Tennessee. Present were the Plaintiff, his lawyer, Mr. Clark H. Tidwell, the lawyer for the Defendants, Mr. Wendell C. Dawson, and Mr. Robert D. Warren, a professional engineer. The Plaintiff gave sworn testimony and presented various surveys, drawings, deeds, and other exhibits on his own behalf. Mr. Warren gave sworn testimony and presented exhibits on behalf of the Defendants.

Based on the foregoing and a review of the Court's file, pertinent portions of the Davidson County tax maps, and such authorities as I have deemed relevant, I have concluded that the Plaintiff's claim should be upheld as to the portion of the Subject Property acquired by the State from Cranford and Bandy and dismissed as to the portion of the Subject Property acquired by the State from Pegasus Properties.

My findings of fact and conclusions of law follow:

1. The Subject Property is part of that shown by the survey of record in Book 49, page 576, said Register's Office of Davidson County, Tennessee, and depicted on the attached "Property Exhibit" entitled "O'Connell Property, Dickerson Pike." The Subject Property is the crosshatched area on said Property Exhibit.

Appendix C

2. The plaintiff is the record owner of the Subject Property.

3. The deed to the State from Cranford and Bandy included the portion of the Subject Property designated as "Parcel 1" on said Property Exhibit, and the deed from Pegasus Properties to the State included the portion of the Subject Property designated as "Parcel 2" on said Property Exhibit.

4. The description in the deed by which Cranford and Bandy acquired their property, which is dated February 4, 1981 and recorded in Deed Book 5714, page 714, said Register's Office, does not include any portion of the Subject Property.

5. The description in the deed by which Pegasus Properties acquired its property, which is dated July 29, 1987 and recorded in Deed Book 7311, page 464, said Register's Office, includes Parcel 2.

6. The Plaintiff has not kept up, used, or otherwise taken possession of any part of the Subject Property.

7. The owners of the Cranford and Bandy tract have not kept up, used, or otherwise taken possession of any part of the Subject Property.

8. Pegasus Properties filled a portion of and constructed a driveway over Parcel 2 and crossed

Parcel 2 via that driveway at least until Parcel 2 was conveyed to the State. A photograph submitted by the Plaintiff shows that said driveway is the only means of ingress and egress for the Pegasus Properties tract.

9. Cranford and Bandy did not establish ownership of Parcel 1 by adverse possession, and thus could not have conveyed it to the State.

10. Pegasus Properties established title to Parcel 2 by adverse possession under TCA § 28-2-101 and TCA § 28-2-102 before conveying Parcel 2 to the State. TCA §§ 28-2-101 and 28-2-102 allow one who adversely possesses property for seven (7) years under color of title to acquire ownership.

a. Pegasus Properties' recorded deed gave it color of title. Generally, absent evidence of bad faith, any instrument purporting to convey land may constitute color of title, even though otherwise defective or even void. The question is not whether the instrument relied on conveys, but whether it purports to convey. *See 3 Am.Jur.2d Adverse Possession § 150 et seq.* (1988). There is nothing to indicate that Pegasus did not in good faith believe it was acquiring title to Parcel 2. In fact, the description in the deed of Pegasus's predecessor in title ran to centerline of Dickerson Road, and the Davidson County tax maps had included for many years Parcel 2 within the bounds

of the tract that Pegasus purchased.

b. There is no fixed rule for determining what constitutes possession. The determination depends on the facts of each case and the nature of the premises. I believe that by filling and building and using a driveway, Pegasus performed the requisite acts of possession.

c. Pegasus did not possess all of Parcel 2, but it possessed a sufficient portion to put the Plaintiff on notice of its claim. Actual possession of a portion of a unitary tract can be sufficient adverse possession of the whole under such circumstances when the claimant has color of title. *See 2 Tenn. Jur., Adverse Possession* § 43 (1982) and the cases cited therein.

d. Pegasus Properties' possession lasted for more than seven (7) years. Pegasus deeded Parcel 2 to the State on August 17, 1995. The Plaintiff concedes that the driveway was installed "sometime in 1988," and the building permit issued to Pegasus by the Metropolitan Government of Nashville and Davidson County, Tennessee, and the Metropolitan Government's inspection report summary compel the conclusion that construction began well before August 17 of that year. The building permit is dated April 12, 1988, and the final inspection of the building occurred on August 26, 1988.

Appendix C

11. Since at least 1970, the Davidson County tax maps have included the Subject Property as part of the Cranford and Bandy and Pegasus Properties tracts or as part of lands of which such tracts were once a part. Thus, a persuasive argument can be made that the Plaintiff's claim is barred by TCA § 28-2-110, which precludes a party from recovering possession or rents and profits if that party or those through whom he claims have not paid taxes for more than twenty (20) years. This argument finds support in *Whitworth v. Hutchison*, 731 S.W.2d (Tenn. App. 1986), where the court of appeals held that plat maps from the county assessor's office could be admitted to show on what parcels the parties had paid taxes.

The decision of the court of appeals in *Winborn v. Alexander*, 279 S.W.2d 718 (Tenn. App. 1954), however, dictates a different result. There, the plaintiffs brought suit to establish title to a 60 foot wide strip of land adjacent to their homeplace. The defendants said § 9159.1 of Williams Code (the predecessor to TCA § 28-2-110) provided a defense, but the court disagreed. The court stated that "[i]n our opinion, this Section does not apply to the case at Bar because it does not appear that complainants failed to pay any taxes on their property [the homeplace], and they were claiming the disputed strip as a portion of their homeplace and not as a separate lot or parcel of land." (There is no mention of tax maps in *Winborn*, but *see Weaver v. Haley*, No. 03A01-9511-CH-00404 (Tenn. App., March 6, 1996, where the court rejected a § 28-2-110 defense even though tax maps showed the disputed land as being

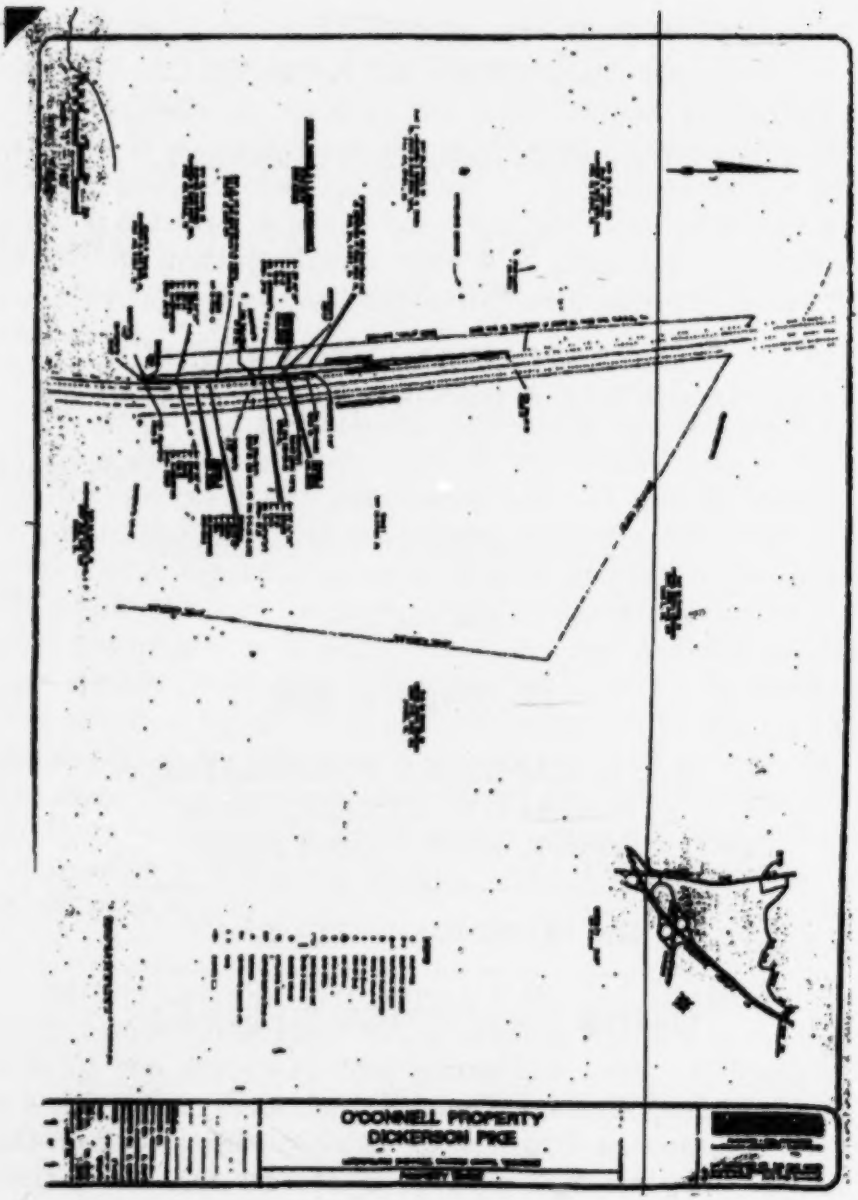
part of the defendant's property.)

The Plaintiff and his predecessors in interest considered the Subject Property, along with the Remainder (as depicted on the attached Property Exhibit), to be part of Tract 1 (as depicted on said Property Exhibit) until Tract 1 was sold in 1996. (Although the Subject Property and the Remainder are separated from Tract 1 by Dickerson Road, all were part of the single parcel depicted on the survey of record in Book 49, page 576 referred to above.) It does not appear that the Plaintiff or those through whom he claims failed to pay taxes on Tract 1. Accordingly, I do not believe § 28-2-110 is applicable.

Respectfully submitted,

C. Dewees BERRY, IV, Special Master

Appendix C



BEST AVAILABLE COPY

Appendix D

APPENDIX D - IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE

DAVID DOUGLAS O'CONNELL,

Plaintiff,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.,

Defendant,

Circuit Court for Davidson County

No. 98C-974

Filed April 9, 2002

Ben H. CANTRELL, Presiding Judge
Patricia J. COTTRELL, Judge
Don R. ASH, Special Judge

No. M2001-00491-COA-R3-CV

ORDER ON PETITION TO REHEAR

David Douglas O'Connell has filed a lengthy and detailed pro se Petition to Rehear, claiming that this court's opinion incorrectly states material facts established by the evidence and set forth in the record. *See* Rule 39(a) Tenn. R. App. P. We have carefully considered his petition, and we find it not to be well-

taken.

It appears to us that the bulk of Mr. O'Connell's petition is given over to re-arguing the points that were determined by the Special aster and affirmed by the trial court. He argues, for example, that the Master erred by finding that a recorded deed gave Pegasus color of title, without addressing an exception found in that deed.

With all due respect, this argument could have been (and no doubt was) presented to the Special Master, but he did not reach the conclusion Mr. O'Connell wished. We note that the Special Master was appointed by the court with the concurrence of both parties because of his ability to sort through complex questions involving the interpretation of deeds and surveys, and we repeat our observation that "findings of fact by a master concurred in by the trial court are conclusive on appeal if supported by any material evidence." Of course, Mr. O'Connell has no complaint about the Special Master's findings in regard to the Cranford property, since they resulted in a judgment against Metro Government, and in his own favor.

Mr. O'Connell also argues that the Master relied upon "pure conjecture" in concluding that the construction of the driveway that forms the basis of Pegasus' adverse possession claim began before August 17, 1988. While there was no proof of exactly when construction began on the driveway, it had to have been either before, on, or after that date. The Master relied upon a known fact (the issuance of a Certificate of Occupancy on August 26, 1988) to infer that it was more likely than

not that the adverse entry onto the land began before the critical date. It appears to us that the Master was appropriately performing the function delegated to him, by drawing appropriate inferences from known facts, and that the known facts constituted material evidence supporting his conclusion.

Mr. O'Connell describes several errors of fact he claims to have found in our opinion, which we do not believe we need address in this order. Even if he is correct in regard to these purported errors, they are all either de minimis, or irrelevant, or both, in regard to the only issue on appeal. The findings of color of title and adverse possession determined the ownership of the Pegasus property. As we have found Mr. O'Connell's arguments in regard to these findings to be unpersuasive, we must deny the Petition to Rehear.

"s/Ben H. CANTRELL, Presiding Judge, M.S."

"s/Patricia J. COTTRELL, Judge"

"s/Don R. ASH, Special Judge"

Appendix E

APPENDIX E - IN THE COURT OF APPEALS TENNESSEE AT NASHVILLE

DAVID DOUGLAS O'CONNELL,

Plaintiff,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.,

Defendant.

Appeal from the Circuit Court of Davidson County

No. 98C-974

Filed May 6, 2002

No. M2001-00491-COA-R3-CV

PETITION TO REHEAR

Pursuant to to T.R.A.P. Rule 39, Plaintiff respectfully petitions the Court for a rehearing of the above styled case, because (1) The Court's opinion incorrectly states material facts established by the evidence and set forth in the record.

Appendix E

THE COURT'S OPINION, SECTION II

Page 3, Paragraph 1

The Master in his report, R 111 - No. 11 rejected any reference to the Davidson County Tax Maps.

Page 3, Paragraph 3

The Court accepts the Masters findings that a recorded deed gave Pegasus, "Color of Title," while at no time addressing the exception of the subject property contained therein. Had the Master thoroughly examined the Pegasus deed, he would have found the driveway, mentioned in his report, was "NOT" the only means of egress or ingress, but that some two hundred (200) feet of the Pegasus property lay alongside the Dickerson Road, south of the subject property, that could be used for ingress or egress. As well as an existing driveway on to the property (that had been in existence for over one hundred years, and which Pegasus used to haul building materials for the construction of their warehouse building).

The Masters inquiries to the code division of Metro, should have informed him that the permit to fill the property with dirt and rock was issued to Bonzance Industries Co. (predecessor of Pegasus), on June 9, 1987. Neither Pegasus or Bonzance filled the subject property, there was no need. Photos, taken in the early 1940's show,

in the background, lying (level with the road), between the road and the fence line. Also shown, is the bush line of the old driveway. This photo is shown as unnumbered trial exhibits in Plaintiff's brief. A large aerial photo, given to the Master, shows the driveway more clearly.

Plaintiff did "not" admit the driveway "was installed" sometime in 1988, but "could" have been then or later. Plaintiff did not know exactly when, but that it was after the warehouse building was built as the construction people used the old driveway.

The Court accepted the Masters findings (with the Trial Court's concurrence), that Pegasus had to have begun construction of their new driveway before August 17, 1988. Why? Why did Pegasus have to do this before August 17, 1988??? An existing driveway was in use at that time. (Was it only to make up seven years of possession?)

Admittedly, there was no proof, whatever, that the driveway was started at that time. It was pure conjecture on the part of the Master. Interesting, especially in as much as the final inspection date of August 26, 1988 was for the warehouse building only. The plumbing on March 8, 1988, and the electric on August 23, 1988. But, the drainage, which would have included the culvert under the driveway and such drainage ditches on each side, was not final inspected until July 27, 1992. This would indi-

cate the new driveway was constructed much later than was determined by the Master (copy of inspections attached).

Page 3, Paragraph 4

If the factual predicate is referring to the building permit, and the building inspection, they are public records, and are indisputable, but to infer that a new driveway "had" to be constructed because of their dates is ludicrous. Of course, Plaintiff did not deny an existing driveway, but neither did Plaintiff give Pegasus permission to do anything by parol or writ.

and, (2) The Court's opinion is in conflict with a statute, prior decisions, or other principle of law.

THE COURT'S OPINION, SECTION III

Page 4, Paragraph 2 and 3

Plaintiff has great respect for his martial arts Master because of his Masters knowledge, ability and integrity and assumed a legal Master would have the same qualities and so there would be no need for a reporter. However, when the legal Master made findings of fact that were not correct and the Trial Judge endorsed these findings, Plaintiff applied the law for relief, i.e., "The law requiring the Master to prepare a transcript to justify his finding." This law requires reversal unless there is material evi-

dence in the record to support it. Plaintiff can find no material evidences to support the Masters conjecture and disputes the existence of such. For someone to be stripped of one's property because of someone's guesswork would be a gross miscarriage of justice.

Where the report of Clerk and Master reflected only that Clerk and Master considered, "pleadings of all the parties and other available data" with no clue given as to the identity of the "other available data" the report was not supported by material evidence and amounted to no more than that of the personal opinion of the Master. *Eslen v. Gresham* 602 S.W. 2d 256 (Tenn. Ct. App. 1980).

Page 4, Paragraph 4 et. seq.

Plaintiff presented to the Master, deeds, surveys, drawings, and photos showing the Pegasus as it is now and as it was in the 1940's. Also among the deeds were the deeds of Pegasus's predecessors in line of title, back to the time when Pegasus Property was a part of the Cranford property, which deed called to the center of the Louisville Branch Turnpike (now old Dickerson Road). The deed to the Pegasus property contained an exception to the subject property. The Master did not address this exception. As the Master had this evidence before him, in the form of a deed, it could be called old evidence, or as no action was taken by the Master, it could be

called new evidence. In either case, the Motion to Alter or Amend was timely (an action or suit is pending from its inception until the rendition of final judgment (Black's Law Dictionary), and should be addressed by this Court.

The case of *Bradly v. McLeod* and *Harris v. Chern* are in conflict, however the Court, in *Schalfer v. Larsen* 688 S.W. 2d 43 (Tenn. Ct. App. 1984) rejected the "newly discovered evidence test" and held that such motions should be looked upon favorably where the litigants have not yet been afforded a trial. Also *see,* T.R.C.P. Rule 52.02 (Plaintiff's Motion to Alter or Amend was filed pursuant to Rules 59.04 and 52.02 T.R.C.P.).

Page 5, Paragraph 1

Once again, Plaintiff must state that he did not admit the driveway was built at any given time.

Page 4, Paragraph 2

In the case of *Moffitt v. Meeks,* there was proof positive as to the date of entry possession. In the Pegasus Case, there was never ever any proof of entry or possession date.

Plaintiff prays the Court to rehear and reconsider.

Respectfully submitted

Appendix E

"s/Douglas David O'Connell, Pro Se"

911 Maynor Avenue
Nashville, TN 37216
615-262-9955

Page: 1 Document Name: D1172a06
KD61 * OPER CODES SUMMARY INSPECTION TRACKING 05/05/99
MAP PARCEL 050-00-0 050.00 CD 04 AREA XX APPEAL
STREET 03446 BUILDING FROM UNIT THRU UNIT BLDG ISSUE 04 2
LOCATED ON SIDE OF DICKERSON PK ELEC Y PLBG Y HVAC Y GAS Y
FEET OF LOCATION
PROP. DESC. W SIDE DICKERSON PK & S OF BELLSIRE DR
OWNER PEGASUS PROPERTIES ADDR. DICKERSON PK
CONTR. TYPE GC NUMBER 04640 NAME PRUETT, C.. K. CONST. CO. (NEW 615 446
PERMIT TYPE NEW RETAIL WAREHSE LAND USE SERVICES SPEC-CONTR-CONST
PURPOSE TO CONSTRUCT A 225' x 100' NON-RESIDENCE BUILDING

PERMIT INSP.	STATUS	NUMBER	FINAL INSP DATE	RELEASE	RELEASE
BUILDING		88 03125 A	08/26/88		
ZONING		88 05843 A	03/08/88		00 00
PLUMBING		88 05592 A	08/23/88	30536	08 24
ELECTRIC					
GAS/MECH					
HVAC-ELEC					
LV-ELEC					

DRAINAGE LETTER NEEDED PER TOM PALKO 1-4-89 . . .
DRAINAGE FINALED PER J. SULLIVAN 7-22-92****

U O REQUEST	REQUESTED	COMPLETED	EXPIRATION	REMARKS
FINAL	00 00 00	07 27 92		00 00 00

Date: 5/4/99 Time: 02:12:08 PM

Appendix E

METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF CODES ADMINISTRATION
METRO HOWARD BUILDING
700 2ND AVENUE, SOUTH
NASHVILLE TENNESSEE 37201
(615) 862-6500
FAX NUMBER (615) 862-6514

PHILIP BREDESEN, MAYOR

July 27, 1992

ADDRESS TO:

C.K. PRUETT CONSTRUCTION CO.
RT. #5 BOX 250
DICKSON, TENNESSEE 37055

RE:

3446 DICKERSON PIKE
MAP NO. 50
PARCEL NO. 50
BUILDING PERMIT 88-3125A
ISSUED APRIL 29, 1988

GENTLEMEN:

The Department of Codes Adminstration and other Metropolitan Departments have inspected the newly

constructed non-residential building, at the above location.

Through routine inspections and visual observations, we have determined that the work performed substantially complies with the requirements of the applicable codes and ordinances of the Metropolitan Government of Nashville and Davidson County. Therefore, we hereby approve it for **Final Use and Occupancy.** However, granting of this **Final Use and Occupancy** in no way relieves the contractor of its responsibility for any work performed noren accordance with applicable codes and ordinances.

Thank you for your cooperation.

Very truly yours,

"s/Manley Biggers, P.E."

MANLEY BIGGERS, P.E.
CHIEF OF CONSTRUCTION
ENFORCEMENT AND
PLANS REVIEW

mb/LFB

Appendix F

APPENDIX F - IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

DAVID DOUGLAS O'CONNELL,

Plaintiff

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.,

Defendant.

Appeal from the Judgment of the Tennessee Court of Appeals in Re, to Appeal from the Circuit Court of Davidson County

No. 98C-974

Filed October 2, 2002

Walter Kurtz, Judge

No. M2001-00491-COA-R3-CV

APPLICATION FOR PERMISSION TO APPEAL THE FINAL DECISION OF THE TENNESSEE COURT OF APPEALS IN THE ABOVE CAPTIONED CASE

Appendix F

On April 15, 2002, the Tennessee Court of Appeals filed their opinion, and decision, affirming the ruling of the lower Court. On May 6, 2002 a Petition to Rehear was filed. On May 6, 2002, the Court filed an order denying the petition. A number of questions in regard to law and fact need to be resolved by this Court.

Question (1). Can a land owner gain "color of title" on a parcel of land which, within the deed, is shown as an exception?

> An exception may be out of the granting part of the deed, or out of the thing already granted. If the former, the effect, in respect to the thing excepted, is as if it had never been included in the deed. The grantor remaining signed as before of the part excepted. Tennessee Jurisprudence. Deeds E. Reservations and Exceptions, § 28.

> The Master ruled Pegasus had color of title. The Master never, at any time, addressed the "exception of the subject property" contained within the Pegasus deed. The trial court endorsed the Master's report verbatim, and without question. The Tennessee Court of Appeals affirmed.

> Appellant brought the "exception" to the attention of the trial court in a Motion to Alter or Amend. Trial Court Judge Walter Kurtz, denied the Motion, stating, in his order, "The working of the deed would not change the Court's determination, and would continue to affirm the

Masters report."

Again, in the Appellant's brief to which the Court ruled, it did not need to examine the deed, because Appellant did not challenge the "color of title," before filing his Motion to Alter or Amend.

After the Appellant filed a Petition to Rehear, the Court seemed to decide that the Master may have known about the exception of the subject property but that with his great knowledge in regard to deeds, maps, surveys, etc., that he must be correct in his opinion. The Court also claimed that the Master was supported by material evidence and, as such, was not required to file a transcript. Appellant roundly disputes this claim.

Question (2). Can the Master be relieved of his legal obligation to file a transcript, by the use of pure conjecture?

The Master had no proof, no material evidence to support his opinions, e.g.,

(A) Pegasus did not fill any part of the subject property.

(B) The new driveway was not the only means of ingress and egress (an existing gravel driveway to the property had been in place for over one hundred years).

Appendix F

(C) Pegasus Properties recorded deed did not give it color of title. (Bonanza, did not purport to convey the subject property, but excepted it in the deed to Pegasus.)

(D) Pegasus could not have color of title and the seven year rule could not apply. In addition, other than their new driveway, Pegasus honored the true property line with their fence, and did not encroach upon the subject property.

The Master determined that the new driveway, had to have been started before a certain date because the building had been inspected at a certain date (*see* appellant's Petition to Rehear, attached). This arbitrary date would serve only to complete seven years of possession and as there is no proof, only conjecture. This date is not valid.

The new driveway, in reality, never had to be built as an old gravel-driveway, was already in place to the property, and was used by the construction people, to haul building materials and heavy equipment, such as concrete mix trucks, etc., onto the site.

The Court, in its, Order on Petition to Rehear (copy attached) states on Page (1), paragraph 4, "The Master relied upon a known fact (the issuance of a Certificate of Occupancy on August 26, 1988) to infer that it was, more likely

that not, that the adverse entry onto the land began before the critical date. It appears to us that the Master was appropriately performing the function delegated to him, by drawing appropriate inferences from known facts, and that the known facts constituted material evidence, supporting his conclusion."

The Certificate of Occupancy on August 26, 1988," mentioned supra was not a certificate of occupancy, but merely a final inspection report on the building, the electric and the plumbing, with no mention of a new driveway (copy attached). In as much as a new driveway was not necessary at the time (an old gravel driveway was in place and in use at this time), an aerial photograph, showing this gravel driveway had been given to the Master.

Question (3). How then, can a mere inspection report on a building be used to determine when a new driveway was built?

To set such a time would be pure conjecture indeed. It is not known how long Pegasus used the old driveway before the new one was built. The inspection report, erroneously called a Certificate of Occupancy (Use and Occupancy was not approved by Metropolitan Government until July 27, 1992 - *see* copy attached), is being called material evidence by the Court to relieve the Master of his legal obligation to file a transcript. The "fact," that a building was inspected is hardly material evidence as to the construc-

tion of a new driveway. There was never a question in regard as to the building.

The Court of Appeals, in its Order on Petition to Rehear, page 2, paragraph 1, states that some errors claimed by Appellant, even if true, are either de minimus or irrelevant or both. The Court in its opinion, Page 5, paragraph 2 (copy attached) states, "The appellant admits that Pegasus built a driveway over parcel 2, shortly after acquiring the property. This is a false statement, Appellant NEVER admitted such, and does not consider such false statements as trifles.

The Appellant only wants this case to be heard by a jury of his peers. Toward that end is the need to secure settlement of important questions of law, and need for the exercise of the Supreme Courts supervisory authority in rectification of errors made. Appellant prays the Court grant permission to appeal.

Respectfully submitted,

"s/David Douglas O'Connell, Pro Se"

David Douglas O'Connell, Pro Se
911 Maynor Avenue
Nashville, Tennessee 37216
(615) 262-9955

Appendix F

ATTACHMENTS

1 Court of Appeals Opinion - Appendix A

2. Appellants Petition to Rehear - Appendix E

3. Court of Appeals, Order on Petition to Rehear - Appendix D

4. Inspection Report on Building (August 26, 1988) - Appendix E

5. Use and Occupancy Approved by Codes (July 27, 1992) - Appendix E

Appendix G

APPENDIX G - IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

DAVID DOUGLAS O'CONNELL,

Plaintiff,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.,

Defendant,

Circuit Court of Davidson County

No. 98C-974

Filed December 16, 2002

No. M2001-00491-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of David Douglas O'Connell, and the record before us, the application is DENIED.

PER CURIAM

APPENDIX H - STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION PRELIMINARY REPORT ON TITLE

FEDERAL PROJ.: COUNTY: *DAVIDSON*
STATE PROJ.: *19074-1233-04* TRACT: *8*

The undersigned hereby certifies to THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF TENNESSEE that: *Based on a personal examination of all public records affecting the title to the real estate described on the attached rider, it is the opinion of the undersigned that, subject to the liens, encumbrances, and other objections noted hereinafter, the marketable fee simple title to said real estate is, as of the date of this report, vested in* PEGASUS PROPERTIES, a partnership under deed from Bonanza Investors Company, a partnership dated 7/29/87, acknowledged 7/29/87, recorded 7/30/87, In Book 7311, Page 464, Registers Office for Davidson County, the consort(s) of the present owner(s) being _____.

NOTE: If title acquired other than by deed, check ( ) and attach rider.

1. TAXES AND SPECIAL ASSESSMENTS:

(a) State, County, City and School taxes have been paid through and including those for the year 1992.

(b) Taxes now due and payable: 1993 S&C $14,007.00 UNPAID, Map 50, Parce. 50

Appendix H

(c) Taxes which are a lien, but not yet due and payable: *1994*

2. MORTGAGES, DEEDS OF TRUST, AND VENDOR'S LIENS: *attach rider.*

3. ARE THERE OTHER LIENS, OBJECTIONS OR DEFECTS? *yes*

a. Easement for sanitary sewers and/or storm drainage of record in Book 6704, page 101, said Register's Office.

b. NOTE: Search is limited to present owner of property.

This title is certified down to *12/17,* 1993, at *8:00* A.M.

BY: "s/Bobby D. DAVIS"
TITLE EXAMINER

FIVE YEAR SALES HISTORY

GRANTOR *Bonanza Invest*

GRANTEE *Pegasus Prop*

DATE OF SALE *7/29/87*

CONSIDERATION *$10.00*

TRANSFER TAX

DEED REFERENCE *7311-464*